defence, ascertaining whether he has any witnesses whom he desires to call and what submissions or comments he has to make on the evidence and, if convicted, what he has to say in mitigation of penalty and with regard to other matters of complaint established or alleged against him.

The present record is silent on these matters and the 3rd defendant has had to rely solely on his memory. It is for this reason that I attach considerable weight and importance to the plaintiff's letter of appeal dated the 10th June, 1963 to which I have already referred.

In the result for the reasons which I have given the plaintiff is entitled to the declaration which he seeks that his dismissal from the Singapore Police Force purported to be effective on the 18th May, 1963, was illegal, void, inoperative and of no effect.

There must be judgment for the plaintiff accordingly with costs.

Judgment for the plaintiff.

Solicitors: *Chor Pee & Hin Hiong.*

TAN SIEW SIN v. HASNUL BIN ABDUL HADI *Re application of* TUN (DR.) ISMAIL & ANOR.

[O.C.J. (Pawan Ahmad J.) July 3, 1967]

[Malacca — Civil Suit No. 38 of 1964]

Practice and Procedure — Subpoena — Application to set aside — Whether by summons in chambers or motion — Experience of misreporting — Evidence indirectly relevant and material to defence case.

The applicants had been served with writs of *subpoena ad testificandum* on the written applications by counsel for the defendant herein. They separately applied by summons in chambers to have those writs set aside on the common ground that the application by the defence was vexatious and an abuse of the process of the court. The 1st applicant denied any knowledge whatever of the facts or the merits or demerits of the suit either personally or in his official capacity as the Minister of Home Affairs and as such he would be in no position to give any relevant evidence. He also said that the defendant was a detainee under the Internal Security Act, 1960, a subject matter under his portfolio, and that the writ had been served on him for political purposes. The second applicant said that he was also unable to give any evidence which could possibly be relevant to any issue which might arise in the suit as he was not present on any of the incidents in question. He also added that he and the defendant were political opponents and the writ had been served on him simply for political purposes and for bringing party differences into the court.

The defence submitted that those applications should be dismissed on two grounds: (1) the application should not proceed by summons in chambers but should be by motion, (2) from the facts disclosed in the defendant's affidavits the evidence of both the 1st and 2nd applicants were material and relevant to the defence to establish the defence contention that the defamatroy words printed and published by the *Utusan Melayu* dated April 7, 1964 and alleged to have been uttered by the defendant were false and fabricated by the *Utusan Melayu.*

Held: (1) as the two applications fall under R.S.C., O. 37 r. 26 the application to set aside the subpoena by way of summons in chambers was rightly made and therefore the first objection by the defence must fail;

(2) although the applicants were not present on those occasions when the defamatory words were alleged to have been uttered by the defendant and they could, therefore, be of no assistance to the defence as to the actual words uttered on those occasions, however, both of them had experience of gross misreporting of their own speeches regarding the defendant's character by the *Utusan Melayu* on some other occasions, and this piece of evidence was indirectly relevant and material to the defence case. Both the applications should therefore be dismissed.

Cases referred to:—

(1) *R.* v. *Hurle-Hobbs, Ex parte* Simmons [1945] 1 All E.R. 273.

(2) *The King* v. *Baines & Anor.* [1909] 1 K.B. 258 at 261.

CIVIL SUIT.

Ajaib Singh (Senior Federal Counsel) for the 1st applicant.

W. H. Sault for the 2nd applicant.

T. T. Rajah for the defendant.

Cur. Adv. Vult.

Pawan Ahmad J.: As a result of the written applications by counsel for defence under Order 37 rule 26 of the Supreme Court Rules, writs of *subpoena ad testificandum* were issued and served on Tun (Dr.) Ismail bin Dato' Haji Abdul Rahman, the then Minister of Home Affairs, whom I shall refer to as the 1st applicant and on Enche Abdul Ghaffar bin Baba, Chief Minister of Malacca, whom I shall refer to as the 2nd applicant, to give evidence for the defence at the trial of the above named suit.

Both the 1st and 2nd applicants filed separate applications by summons in chambers supported by affidavits to have the writs of *subpoena* served on them set aside on the common ground that the applications by the defence for the issue of the writ were vexatious and an abuse of the process of the court.

The 1st applicant's case is that he has no knowledge whatsoever of the facts or the merits or demerits of the above mentioned suit either personally or in his official capacity as the Minister of Home Affairs and as such he would be in no position to give any relevant evidence. The 1st applicant also says that the defendant is a detainee under the Internal Security Act 1960, a subject matter under his portfolio, and that the writ has been served on him for political purposes.

The 2nd applicant's case is that he is also unable to give evidence whch can possibly be relevant to any issue which may arise in the above named suit as he was not present on any of those occasions when the defamatory statements were alleged to have been uttered by the

defendant. The 2nd applicant adds that he and the defendant are political opponents and the writ has been served on him simply for political purposes and for bringing party differences into the court.

The defence on the other hand states that the 1st applicant is required by the defence to establish the fact that the printers and publishers of the *Utusan Melayu* are unreliable and malicious of the defendant because they had on some other occasions published defamatory statements of the defendant purported to have been uttered by the 1st applicant and subsequently at the request of the 1st applicant the *Utusan Melayu* made the necessary corrections.

As for the 2nd applicant the defence states his evidence is material and relevant to establish the fact that the defamatory words printed and published by the *Utusan Melayu* dated 7th April, 1964 and alleged to have been uttered by the defendant are false and fabricated by the *Utusan Melayu*. Through the 2nd applicant the defence intends to prove that the *Utusan Melayu* on other occasions published various false statements purported to have been uttered by the 2nd applicant regarding the defendant but subsequently the *Utusan Melayu* published denial statements as a result of representations made by the 2nd applicant to the *Utusan Melayu*.

Counsel for the defence submits that these two applications to set aside the writs should be dismissed on two grounds. The first ground is that the applications should not proceed by summons in chambers but should be by motion. In support of this proposition the counsel for the defence cites the case of *Rex* v. *Hurle-Hobbs, Ex parte Simmons*.[1]

The second ground is that from the facts disclosed in the defendant's affidavits the evidence of both the 1st and the 2nd applicants are material and relevant to the defence to establish the defence contention that the defamatory words printed and published by the *Utusan Melayu* dated 7th April, 1964 and alleged to have been uttered by the defendant are false and fabricated by the *Utusan Melayu*.

I am unable to agree with the counsel for the defence on the first objection raised by him because these two applications fall under Order 37 rule 26 of the Supreme Court Rules, and under the heading "Right to *subpoena* witness" at page 477 of *Mallal's* Supreme Court Practice, it is clearly stated that the application to set aside a subpoena is by summons in chambers.

As to the second objection raised by the defence I think it is necessary first to examine both the statement of claim and the defence. The suit is an action for slander and is based on a publication of the *Utusan Melayu* dated the 7th April, 1964. The defence is that the said publication is a falsehood fabricated by the *Utusan Melayu* against the defendant.

In the case of *The King* v. *Baines & Anor.*[2] at 261 Bingham J. states:—

> "I am of opinion that this rule must be made absolute. There can be no doubt as to the jurisdiction of the court to interfere where it is satisfied that its process is being used for indirect or improper objects. It must not be supposed that the position which the applicants occupy affords them any privilege. They stand in the same position as any other of His Majesty's subjects. But the court has to inquire whether its process has been issued against them with the object and expectation on reasonable grounds of obtaining from them evidence which can be relevant."

It is clear from the record that both the 1st and 2nd applicants were not present on those occasions when the defamatory words were alleged to have been uttered by the defendant and they can therefore, be of no assistance to the defence as to the actual words uttered by the defendant on those occasions. However, both the 1st and the 2nd applicants have had experience of gross misreporting of their own speeches regarding the defendant's character by the *Utusan Melayu* on some other occasions and this piece of evidence, in my view, is indirectly relevant and material to the defence case.

Both the applications are, therefore, dismissed with costs.

Applications dismissed.

LEE KUAN YEW v. SYED JA'AFAR ALBAR & ORS.

[O.C.J. (Wee Chong Jin C.J.) September 22, 1967]

[Singapore — Suit Nos. 720 & 721 of 1965]

Defamation — Libel — Statements made in course of speeches at public meetings — Publication in newspaper — Statement contained in open letter to foreign newspaper representative with a view to publication — No foundation for allegations — Apology — Withdrawal of imputations — Undertaking to give fullest publicity to — Discontinuation of actions.

These two actions for libel were consolidated and came for trial before the Honourable the Chief Justice on September 22, 1967. They were discontinued upon admission by the defendants that "there is no foundation for any of these disgraceful allegations" they had made against the plaintiff, their agreeing to apologise to him, and the 2nd defendants (newspaper publishers) complying with the undertaking contained in the statement by counsel for the plaintiff to publish the terms of the said statements read in open court on the front page in two separate issues of the *Utusan Melayu* not later than September 29, 1967 and upon the defendants jointly and severally paying to the plaintiff his costs of these proceedings.